

Law of Prevention of Sexual Harassment in Workplace

By

Rupanjana De

FCS, LL.M, M.A (App. Eco), EMLE

Practising Company Secretary, Kolkata

rupanjana.de@gmail.com

Sexual harassment constitutes violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India, her right to life and to live with dignity under article 21 of the Constitution and her right to practice any profession or to carry on any occupation, trade or business under Article 19(1)(g) which includes a right to a safe environment free from sexual harassment. Further, the protection against sexual harassment and the right to work with dignity are some human rights that are universally recognized by international conventions and instruments like the Convention on the Elimination of all Forms of Discrimination against Women ratified by India.

Despite the existence of the Vishaka guidelines for a while, the situation of Indian women in workplace was far from improved. The guidelines were not implemented properly in workplaces. With more women joining workforce it became imperative to have a government promulgated legislation to ensure a safe and secure work environment for women. The enactment of this law on sexual harassment therefore came as a big respite. The POSH Act came into force on 9th December 2013. It aimed at protecting women against sexual harassment at workplace, prevention and redressal of complaints of sexual harassment and matters connected therewith.

The Act is applicable in any place which is a workplace for a woman across India. The workplace may be of any size or form. It applies to government bodies, NGOs, private and public sector organizations, firms, companies, institutions and organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, shops, factories, fields, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house. This, however, is only a suggestive list.

Any employer having more than 10 employees in a workplace has to mandatorily constitute Internal Complaints Committee (ICC), which is the main mechanism to address sexual harassment at the workplace. It may be noted that the POSH Act, 2013 is applicable only in a workplace scenario. Cases of sexual harassment happening outside the workplace in the private life of individuals, even if persons involved are colleagues at work place, do not come under the purview of the Act.

The POSH Act protects women regardless of their age, designation, seniority or juniority and work status, i.e. whether they are working in an organized or unorganized sector or private or public sector, irrespective of hierarchy. The domestic workers are included within its coverage. Also included are students and volunteers. Impliedly sexual harassment of men is not covered.

The Act renders sexual harassment as unlawful in almost every perceivable employment situation and relationship (involving owners, employers, employees, superiors, subordinates,

clients, contractors, customers and third parties having business dealings with the work place on either side).

Aggrieved woman

Sec 2(a) of the POSH Act defines an aggrieved woman as follows: (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

The definition is an inclusive one covering any woman (who alleges to have been subjected to any kind of sexual harassment) of any age and status including those who are employed (whether permanently or temporarily, directly or through an agent, for remuneration or on honorary basis and so on) and those who are not employed but who enter the workplace in any other capacity like client, customer, freelancer, consultant, apprentice etc.

The second part of the definition covers women of any age who are employed in a dwelling place or house when the sexual harassment takes place in the dwelling place. This is a remarkable achievement of the POSH Act in that it has been successful in extending the protection from sexual harassment to women working as domestic help also. This area is one of the hotbeds as far as sexual harassment is concerned.

Sec 2(f) of the POSH Act defines an 'employee' which is also substantially wide. It covers all sorts of working women employed at any workplace for a work on a regular, temporary, ad hoc, or daily wage basis, whether they are employed directly or through agent or contractor, whether or not the principal employer is aware of this. Again the employment may be for remuneration or not, work on a voluntary basis or otherwise, whether the terms of employment are express or implied. The definition also states that co-workers, probationers, contract workers, trainees and apprentices, are also included within the definition.

What constitutes Sexual Harassment under POSH Act

Sec 2(n) defines sexual harassment as any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:—

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

By implication, the definition is quite wide and covers both direct and implied sexual conduct, as well as physical, verbal or written conduct, physical contact and advances as well as sexually covered remarks or showing pornography even if there is no physical contact involved. What makes it 'sexual harassment' is the unwelcome and unwanted nature of the conduct to the person to whom these are directed.

What is a Workplace?

Sec 2(o) of the POSH Act defines workplace as including the following:

- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially

financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house;

A number of cases have proved that sexual harassment is not necessarily directed towards employees only and that too exclusively within traditional work environment. A visitor may be sexually harassed, while an employee may be harassed at a place outside the real workplace but the same may be arising out of and during the course of employment. So the POSH Act has given a very wide coverage to the term 'workplace' and has included any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment. Thus the notion of the workplace go beyond the physical place where work is done and include situations arising out of, or in the course or connection to, employment including commuting to and from work.

Prevention of cases and resolution of complaints

The POSH Act deals with the prevention of sexual harassment and lays down detailed provisions with respect to forming complaints committees, filing of complaints thereat, procedure to deal with the complaints, hearing, reporting and final resolution of the cases. The Act also elaborates the duties of employers, employees and the duties and powers of the complaints committees, the District Officer and the government. It lays down about the cognizance of offences under the Act.

For inquiring into and adjudicating a claim of sexual harassment, the POSH Act provides for the constitution of grievance redressal forums in the form of Complaints Committees. Two types of complaints committees, to operate at different levels, have been provided under the POSH Act, viz., Internal Complaints Committee and Local Complaints Committee. These complaints committees are independent forums and are required to act impartially and in an unbiased manner. Every workplace employing 10 or more employees is required to have an internal committee. A Local Committee is constituted at the district level in these cases: (a) where the employer has employed less than 10 persons in the workplace; (b) sexual harassment in the unorganized sector; and (c) where employer himself is the perpetrator. The POSH Act provides the composition, tenure and other terms and conditions of the working of these committees in details.

Conclusion

Sexual harassment of women at workplace has especially been widely prevalent in the unorganized sector and backward areas. But that does not make the organized sector and urban areas immune to the menace. A series of cases of sexual harassment in the workplace has exposed the unrestrained nature of this problem in every corner of India. But the good news is that people, especially the working women in India, are gradually becoming aware of their rights at the workplace. Many of them are coming out to speak up about the experiences faced by them. Punishments to perpetrators are also regularly being handed out. This in turn is encouraging more women to break the shackles and embrace their rights under the anti-sexual harassment law in the country. The other good news is that because of obligations imposed under the POSH Act on employers, they are increasingly becoming aware of their responsibilities in ensuring the safety of the workplace. Both of these are steps in the right direction.